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UNITED STATES DISTRICT COURT FOR THE
CENTRAL DISTRICT OF CALIFORNIA

Scott A. Emerick;

Plaintiff,

v.

Executive Office for Immigration Review

Defendant.

Case No. _____

**Freedom of Information
Act**

INTRODUCTION

1. Plaintiff Scott Emerick (“Plaintiff”) submitted a Freedom of Information Act (“FOIA”) request to Defendant Executive Office for Immigration Review (“Defendant” or “EOIR”) on September 20, 2023 for records concerning his client’s immigration history, namely Haban Negatmehr. Defendant has failed to make a determination on the FOIA request and failed to disclose the requested documents within the time prescribed by FOIA. Therefore, Plaintiff now files this action for injunctive and other appropriate relief under the Freedom of Information Act, 5 U.S.C. § 552.

JURISDICTION AND VENUE

2. This court has jurisdiction under 5 U.S.C. §§ 552(a)(4)(B), (6)(C)(i) and 28 U.S.C. § 1331.

3. Venue is proper under 5 U.S.C. § 552(a)(4)(B) in which a complaint can be brought in any district court in which the complainant resides or has his principal place of business. Plaintiff Emerick's principal place of business is located in this court's district.

PARTIES

4. Plaintiff Scott Emerick is an immigration attorney with the Bolour / Carl Immigration Group, APC with an office in Los Angeles, CA. Plaintiff represents foreign nationals appearing in court before EOIR. Plaintiff represents Haban Negatmehr and is seeking records from his client's previous hearing before EOIR in 2014.

5. Defendant EOIR is a component agency of Department of Justice ("DOJ") and an agency of the United States under 5 U.S.C. § 552(f)(1). Among other duties, EOIR is responsible for conducting removal proceedings in immigration courts and adjudicate appeals arising from the proceedings. EOIR has responsive records in its possession, custody, and control. Defendant is charged with the duty to provide public access to records in its possession consistent with the requirements of FOIA.

FACTUAL ALLEGATIONS

6. On September 20, 2023, Plaintiff filed a FOIA request with EOIR for records relating to Haban Negatmehr's immigration history. The FOIA request complied with EOIR's FOIA requirements.

7. In an email dated September 22, 2023, EOIR confirmed receipt of Plaintiff's FOIA request and assigned the request a control number, 2023-80670. The agency's confirmation of receipt is attached as Exhibit A.

8. As of this date, EOIR has failed to respond to Plaintiff's request.

9. Under FOIA, an agency is required to make an initial “determination” with regard to a request within twenty business days of its receipt. See 5 U.S.C. § 552(a)(6)(A)(i).

10. If there are “unusual circumstances,” as defined by statute, an agency may extend the time to make its determination by no more than ten working days. See 5 U.S.C. § 552(a)(6)(B)(i).

11. Under FOIA, a person making a request is deemed to have exhausted his administrative remedies if the agency fails to comply with the applicable time limit provisions set forth in the statute. See 5 U.S.C. § 552(a)(6)(C)(i).

12. EOIR thus far has failed to produce any responsive agency records to Plaintiff and the statutory period for an agency response has expired. EOIR similarly has failed to communicate the scope of the documents it intends to produce and its reasons for withholding any documents.

CAUSES OF ACTION
Violation of the Freedom of Information Act, 5 U.S.C. § 552
for Failure to Respond Within the Time Required

13. The foregoing allegations are repeated and incorporated as though fully set forth herein.

14. Under the FOIA, Defendant was required to respond to Plaintiff’s FOIA request and to notify Plaintiff of the agency’s determination within thirty working days after receiving the request. 5 U.S.C. § 552(a)(6)(A), (6)(B).

15. Defendant’s failure to make the requisite determination and to communicate it to the Plaintiff within the time allowed by the statute violates the FOIA. 5 U.S.C. § 552(a)(6)(A)(i).

PRAYER FOR RELIEF

Wherefore, Plaintiff respectfully prays for the following relief:

- A. Assume jurisdiction in this matter and maintain jurisdiction until Defendant complies with FOIA and every order of this Court;
- B. Declare that Defendant's failure to make a timely determination with regard to Plaintiff's request violates FOIA, 5 U.S.C. § 552(a)(6)(A)(i) and (B);
- C. Award Plaintiff costs of suit, and reasonable attorney's fees incurred in this action pursuant to 5 U.S.C. § 552(a)(4)(E); and
- D. Grant any further relief as the Court deems just and proper.

Dated this 21st day of November, 2023.

Attorney for Plaintiff:

/s/Scott A. Emerick

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